

Union Calendar No. 402

109TH CONGRESS
2^D SESSION

H. R. 5418

[Report No. 109-673]

To establish a pilot program in certain United States district courts to encourage enhancement of expertise in patent cases among district judges.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2006

Mr. ISSA (for himself and Mr. SCHIFF) introduced the following bill; which was referred to the Committee on the Judiciary

SEPTEMBER 21, 2006

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 18, 2006]

A BILL

To establish a pilot program in certain United States district courts to encourage enhancement of expertise in patent cases among district judges.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. PILOT PROGRAM IN CERTAIN DISTRICT**
2 **COURTS.**

3 (a) *ESTABLISHMENT.*—

4 (1) *IN GENERAL.*—*There is established a pro-*
5 *gram, in each of the United States district courts des-*
6 *ignated under subsection (b), under which—*

7 (A) *those district judges of that district*
8 *court who request to hear cases under which one*
9 *or more issues arising under any Act of Congress*
10 *relating to patents or plant variety protection*
11 *must be decided, are designated by the chief*
12 *judge of the court to hear those cases;*

13 (B) *cases described in subparagraph (A) are*
14 *randomly assigned to the judges of the district*
15 *court, regardless of whether the judges are des-*
16 *ignated under subparagraph (A);*

17 (C) *a judge not designated under subpara-*
18 *graph (A) to whom a case is assigned under sub-*
19 *paragraph (B) may decline to accept the case;*
20 *and*

21 (D) *a case declined under subparagraph (C)*
22 *is randomly reassigned to one of those judges of*
23 *the court designated under subparagraph (A).*

24 (2) *SENIOR JUDGES.*—*Senior judges of a district*
25 *court may be designated under paragraph (1)(A) if at*

1 *least 1 judge of the court in regular active service is*
2 *also so designated.*

3 (3) *RIGHT TO TRANSFER CASES PRESERVED.—*

4 *This section shall not be construed to limit the ability*
5 *of a judge to request the reassignment of or otherwise*
6 *transfer a case to which the judge is assigned under*
7 *this section, in accordance with otherwise applicable*
8 *rules of the court.*

9 (b) *DESIGNATION.—The Director of the Administrative*
10 *Office of the United States Courts shall, not later than 6*
11 *months after the date of the enactment of this Act, designate*
12 *not less than 5 United States district courts, in at least*
13 *3 different judicial circuits, in which the program estab-*
14 *lished under subsection (a) will be carried out. The Director*
15 *shall make such designation from among the 15 district*
16 *courts in which the largest number of patent and plant va-*
17 *riety protection cases were filed in the most recent calendar*
18 *year that has ended, except that the Director may only des-*
19 *ignate a court in which—*

20 (1) *at least 10 district judges are authorized to*
21 *be appointed by the President, whether under section*
22 *133(a) of title 28, United States Code, or on a tem-*
23 *porary basis under other provisions of law; and*

24 (2) *at least 3 judges of the court have made the*
25 *request under subsection (a)(1)(A).*

1 (c) *DURATION.*—*The program established under sub-*
2 *section (a) shall terminate 10 years after the end of the 6-*
3 *month period described in subsection (b).*

4 (d) *APPLICABILITY.*—*The program established under*
5 *subsection (a) shall apply in a district court designated*
6 *under subsection (b) only to cases commenced on or after*
7 *the date of such designation.*

8 (e) *REPORTING TO CONGRESS.*—

9 (1) *IN GENERAL.*—*At the times specified in*
10 *paragraph (2), the Director of the Administrative Of-*
11 *fice of the United States Courts, in consultation with*
12 *the chief judge of each of the district courts designated*
13 *under subsection (b) and the Director of the Federal*
14 *Judicial Center, shall submit to the Committee on the*
15 *Judiciary of the House of Representatives and the*
16 *Committee on the Judiciary of the Senate a report on*
17 *the pilot program established under subsection (a).*
18 *The report shall include—*

19 (A) *an analysis of the extent to which the*
20 *program has succeeded in developing expertise in*
21 *patent and plant variety protection cases among*
22 *the district judges of the district courts so des-*
23 *ignated;*

1 (B) an analysis of the extent to which the
2 program has improved the efficiency of the courts
3 involved by reason of such expertise;

4 (C) with respect to patent cases handled by
5 the judges designated pursuant to subsection
6 (a)(1)(A) and judges not so designated, a com-
7 parison between the 2 groups of judges with re-
8 spect to—

9 (i) the rate of reversal by the Court of
10 Appeals for the Federal Circuit, of such
11 cases on the issues of claim construction
12 and substantive patent law; and

13 (ii) the period of time elapsed from the
14 date on which a case is filed to the date on
15 which trial begins or summary judgment is
16 entered;

17 (D) a discussion of any evidence indicating
18 that litigants select certain of the judicial dis-
19 tricts designated under subsection (b) in an at-
20 tempt to ensure a given outcome; and

21 (E) an analysis of whether the pilot pro-
22 gram should be extended to other district courts,
23 or should be made permanent and apply to all
24 district courts.

1 (2) *TIMETABLE FOR REPORTS.*—*The times re-*
 2 *ferred to in paragraph (1) are—*

3 (A) *not later than the date that is 5 years*
 4 *and 3 months after the end of the 6-month period*
 5 *described in subsection (b); and*

6 (B) *not later than 5 years after the date de-*
 7 *scribed in subparagraph (A).*

8 (3) *PERIODIC REPORTING.*—*The Director of the*
 9 *Administrative Office of the United States Courts, in*
 10 *consultation with the chief judge of each of the district*
 11 *courts designated under subsection (b) and the Direc-*
 12 *tor of the Federal Judicial Center, shall keep the com-*
 13 *mittees referred to in paragraph (1) informed, on a*
 14 *periodic basis while the pilot program is in effect,*
 15 *with respect to the matters referred to in subpara-*
 16 *graphs (A) through (E) of paragraph (1).*

17 (f) *AUTHORIZATION FOR TRAINING AND CLERK-*
 18 *SHIPS.*—*In addition to any other funds made available to*
 19 *carry out this section, there is authorized to be appropriated*
 20 *not less than \$5,000,000 in each fiscal year for—*

21 (1) *educational and professional development of*
 22 *those district judges designated under subsection*
 23 *(a)(1)(A) in matters relating to patents and plant va-*
 24 *riety protection; and*

1 (2) *compensation of law clerks with expertise in*
2 *technical matters arising in patent and plant variety*
3 *protection cases, to be appointed by the courts des-*
4 *ignated under subsection (b) to assist those courts in*
5 *such cases.*

6 *Amounts made available pursuant to this subsection shall*
7 *remain available until expended.*

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